

CA-18

RESOLUTION NO. 2007-002

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CIVIC TRUST FUND ESCROW AGREEMENT WITH DRA PROPERTIES, LLC .

WHEREAS, the City Council of the City of Ankeny, Iowa, adopted Resolution 2005-410, dated September 6, 2005, authorizing the Mayor to execute an Urban Renewal Development Agreement with DRA Properties, LLC, that outlines certain terms and conditions for the development of the Prairie Trail Project; and

WHEREAS, the City of Ankeny and DRA Properties desires to further memorialize how those portions of the Development Agreement pertaining to the CIVC Trust Fund created therein shall be enabled, made operative and managed by a third party in a segregated account.

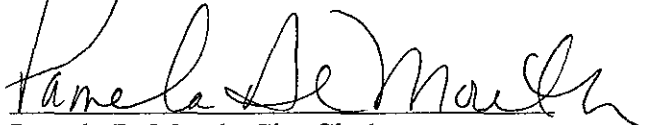
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ankeny, Iowa, hereby approves the terms outlined in the Civic Trust Fund Escrow Agreement and authorizes the Mayor to execute said Agreement.

DATED at Ankeny, Iowa, this 2nd day of January, 2007.



Steven D. Van Oort, Mayor

ATTEST:



Pamela DeMouth, City Clerk

CIVIC TRUST FUND ESCROW AGREEMENT

This AGREEMENT ("Agreement") is made and entered into, to be effective as of January 2, 2007, by and between the City of Ankeny, Iowa, an Iowa municipality ("City") and DRA Properties LLC, an Iowa limited liability company ("DRA").

WITNESSETH:

WHEREAS, Article 2 of the Urban Renewal Development Agreement, which was recorded on August 20, 2005, in Book 11295, Page 709 ("Development Agreement") established a CIVIC Trust Fund; and

WHEREAS, the purpose and intent of this document is to further memorialize how those portions of the Development Agreement pertaining to the CIVIC Trust Fund created therein shall be enabled, made operative and managed by a third party in a segregated account;

WHEREAS, the parties desire the funds to be held in escrow by a third party Escrow Agent to be administered in accordance with the Development Agreement.

NOW, THEREFORE, for and in consideration of the Development Agreement, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** The following terms used in this Agreement shall have the meanings set forth below in this Section. Any term used in this Agreement and not defined shall have the meaning given to that term in the Development Agreement.

(a) "Deposit Request" means the City's written requests to DRA in the form attached to this Agreement as Exhibit "B" for the deposit of money into the Fund pursuant to the Development Agreement and Section 4 hereof, which requests shall not be made more often than once every thirty (30) days during the term of this Agreement.

(b) "Disbursement Request" means the City's written requests to Escrow Agent in the form attached to this Agreement as Exhibit "C" for the disbursement of money from the Fund pursuant to the Development Agreement and Section 3 hereof.

(c) "Fund" means the CIVIC Trust Fund established by the Development Agreement which pursuant to this Agreement shall be administered by Escrow Agent.

(d) "Improvements" means the essential infrastructure expenses incurred with respect to the Property identified on Exhibit "A" as attached to this Agreement, which expenses trigger DRA's obligation to make deposits into the Fund pursuant to the Development Agreement.

- (e) "Property" means the Land as identified in the Development Agreement.
- (f) "Escrow Agent" shall mean Valley Bank.

2. Fund.

(a) Acknowledgment. The City acknowledges that DRA has made an initial deposit into the Fund in the amount of One Million Dollars [\$ 1,000,000], which amount was deposited directly with the City (the "Initial Deposit"), and which sum represents the premium portion (25%) of DRA's deposition into the Fund for the initial Four Million Dollars (\$ 4,000,000) of Improvements to be completed by the City in accordance with the formula established by the Development Agreement. DRA shall receive credit in the amount of the Initial Deposit toward its contributions to the Fund required by the Development Agreement.

(b) The City and DRA agree that, with the exception of the Initial Deposit, all moneys deposited into the Fund shall be held by Escrow Agent in an interest bearing account administered by Escrow Agent's branch located at 210 NE Delaware Avenue, Ankeny, Iowa. Any interest earned on such moneys shall be added to the principal balance of the Fund and disbursed in accordance with the provisions of this Agreement and the Development Agreement.

(b) Use. The Fund shall, except as otherwise stated in this Agreement, be used only for the purposes set out in the Development Agreement.

3. Disbursement Request. Escrow Agent shall make disbursements from the Fund upon the City's submission of and in accordance with a Disbursement Request in the form attached to this Agreement as Exhibit "B" signed by both the City and DRA. The City may elect to pay any portion of the money in the Fund to parties other than the City, which shall be reflected on the applicable Disbursement Request signed by both the City and DRA.

4. Deposits. DRA shall deposit into the Fund such funds as needed to complete disbursements to the City in accordance with properly completed Deposit Requests and in compliance with and up to the maximum amount set out in the Development Agreement. DRA shall either deposit the requested amount into the Fund or deliver its objection to such Deposit Request within fifteen (15) working days after the presentation of such Deposit Request. DRA shall object to a Deposit Request only on the grounds that it has completely fulfilled its obligation to make deposits into the Fund pursuant to the Development Agreement, or that a Deposit Request has not been correctly or completely presented.

5. Improvements. The City covenants and agrees with DRA as follows:

(a) Commencement of Work. The City shall not commence or perform work of any kind upon the Property or deliver or have delivered any materials or equipment to or upon the Property except as mutually agreed upon by the parties to complete the Improvements.

(b) Construction. The City will use its best efforts to commence and complete the Improvements in compliance with the schedule agreed upon between the City and DRA.

(c) Changes in Schedule of Work. Any departures from or alterations to the schedule shall be agreed upon between the City and DRA.

6. Lien Protection. The City shall promptly pay or cause to be paid, when due, all costs, charges and expenses incurred in connection with the construction and completion of the Improvements and shall keep the Property free and clear of any and all liens.

7. Use of Fund. The City will accept disbursements from the Fund in accordance with the provisions of this Agreement and will use, or cause to be used, each such disbursement in accordance with the Development Agreement.

8. Conditions Precedent. Escrow Agent shall not be obligated to make any disbursement from the Fund to or for the benefit of the City unless at the time of each Disbursement Request all of the following conditions prevail:

(a) No Default. There shall exist no condition, event or act that would constitute a default (with or without notice and/or lapse of time) under this Agreement or the Development Agreement.

(b) Funds Received. Escrow Agent has received a deposit from DRA sufficient to make disbursement.

9. Termination. This Agreement shall terminate upon the complete fulfillment of DRA's obligation to make deposits into the Fund pursuant to the Development Agreement and the full disbursement by Escrow Agent of the Fund, including interest.

10. No Amendment. Nothing contained in this Agreement shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Development Agreement and, if there shall exist a conflict between the terms and provisions of this Agreement and those of the Development Agreement, then the terms and provisions of the Development Agreement shall control.

11. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of Iowa.

12. Successors and Assigns. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors and assigns of such parties. DRA may not assign its rights, interests, or obligations under this Agreement without first obtaining the City's prior written consent.

13. Attorneys' Fees. In the event that any party shall engage the services of an attorney at law to enforce the provisions of this Agreement, the prevailing party shall pay all costs of such enforcement, including any reasonable attorneys' fees and costs actually incurred.

14. No Agency or Partnership. Nothing contained in this Agreement shall constitute the City as a joint venturer, partner or agent of DRA, or render the City liable for any debts, obligations, acts, omissions, representations or contracts of DRA.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

16. Reconciliation and Accounting. Beginning January, 2007, a designated representative from the City and DRA shall meet not less than every three months for the purpose of reconciliation and accounting of contributions and/or withdrawal from the CIVIC Fund. A written memorandum of agreement regarding their reconciliation shall be prepared within three [3] days of each meeting and distributed to the City Manager and DRA's Manager. Any disagreement or dispute between the parties as to what does or does not qualify as an appropriate deposit or disbursement shall be submitted to Jeffrey A. Boehlert who will make an independent determination and whose decision shall be final and binding on the parties.

17. Stipulated Credits to Fund. For a period of five [5] years or until the parties have otherwise fulfilled their respective contributions to the project per the Development Agreement, the City and DRA agree that

(a) the City shall be entitled to disbursement of an amount equal to the sum of Four Hundred Thousand dollars (\$400,000) per year; and

(b) DRA shall be entitled to credit against its required deposits into the Fund an amount equal to the sum of Five Hundred Thousand dollars (\$500,000) per year;

each for reasonable and necessary expenses, fees or other disbursements related to the Prairie Trail Project.

18. City's ability to borrow from Fund. The parties agree that the City may, as allowed by Iowa law for municipal inter-fund loans, borrow available funds from the Fund for uses outside the Prairie Trail Project as anticipated and allowed by the Development Agreement. All inter-fund loans from the Fund shall be reimbursed to the

CIVIC Trust Fund with interest at a rate agreed upon between the parties at the time of the loan.

19. Future Contributions or Extension of Civic Agreement. The Development Agreement provides the parties may, but are not obligated to, extend the terms and conditions of the Civic Fund in excess of the stated limits in the Development Agreement. The parties reiterate their agreement to work cooperatively and collaboratively in the future for the mutual benefit of the residents of Ankeny and the parties herein. Should the circumstances warrant, and the parties agree in writing, the Civic Trust Fund may be increased to larger amounts in proportion to a premium formula, if any, to be agreed upon between the parties.

ATTACHED EXHIBITS. The following Exhibits are attached to this Agreement:

- ☒ Exhibit A Improvements
- ☒ Exhibit B Disbursement Request
- ☒ Exhibit C Deposit Request

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

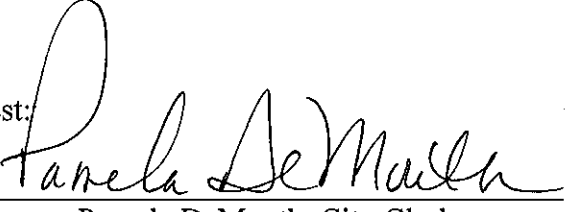


<p>Attest: <u></u> By: <u>Pamela DeMouth, City Clerk</u></p>	<p>City of Ankeny, Iowa By: <u></u> Steven D. Van Oort, Mayor</p>
	<p>DRA Properties LLC By: <u></u> Name: <u>Tara Meredith</u> Title: <u>Secretary, DRA Properties LLC</u> <u>An authorized representative</u></p>

EXHIBIT A

Improvements

Construction of Improvements that may include:

- arterial street system,
- traffic control devices,
- street lighting fixtures,
- streetscape features,
- biking/walking trails along the street arterials,
- sidewalks and pedestrian overpasses and underpasses,
- water main along the street arterials,
- sanitary sewer trunk lines,
- public storm water management system,
- parks and open spaces,
- Town Center paving and amenities,
- transit system corridors and depots, and
- public art

The above list is not intended to limit the scope of essential infrastructure expenses DRA and the City may choose to complete within the Prairie Trails Project as contemplated and/or agreed to by the parties in the future. City may undertake any essential infrastructure expense as agreed by the parties and allowed by Iowa law whether or not it is specifically identified in the list above.

EXHIBIT B

Disbursement Request

The undersigned hereby requests from Valley Bank ("Escrow Agent") the disbursement of funds in the amount of \$_____ ("Disbursement Request") from the CIVIC Trust Fund established pursuant to the Urban Renewal Development Agreement dated July __, 2005.

The undersigned hereby represents and warrants to DRA that the following information and certifications provided in connection with this Disbursement Request are true and correct as of the date hereof:

1. Purpose for which disbursement is requested?
2. To whom shall the disbursement be made ?
3. The undersigned certifies that the disbursement requested pursuant to this Disbursement Request will be used solely as allowable under the Development Agreement.
4. The following is a summary of Disbursements to date:

	Prairie Trail	Other	Total
Current Year			
Prior Year			
TOTAL			

5. All capitalized terms used in this Disbursement Request without definition shall have the meanings ascribed to them in the Agreement

IN WITNESS WHEREOF, the undersigned has executed this Disbursement Request as of the day and date first above written.

City of Ankeny, Iowa:

Date: _____

By: _____

Name: _____

Approved this ____ day of _____, 20__.

DRA Properties LLC

By _____

Name:

EXHIBIT C

Deposit Request

The undersigned hereby requests that D.R.A. Properties, L.C. ("Developer") deposit funds in the amount of \$_____ ("Deposit Request") into the CIVIC Trust Fund established pursuant to the Urban Renewal Development Agreement dated July __, 2005 (the "Development Agreement").

The undersigned hereby represents and warrants to DRA that the following information and certifications provided in connection with this Deposit Request are true and correct as of the date hereof:

1. The City has expended the following for the construction of the following essential infrastructure improvements at the Prairie Trail development:

2. The undersigned certifies that the City has paid all outstanding invoices for such expenditures, and that such expenditures have not formed the basis to any extent of any prior Deposit Request to DRA pursuant to the Development Agreement.

3. The requested deposit equals one hundred twenty-five percent (125%) of such expenditures.

4. The following is a summary of Deposit Requests to date:

Current Deposit Request: _____

Sum of Prior Deposit Requests: _____

Total to date of all Deposit Requests: _____

5. All capitalized terms used in this Disbursement Request without definition shall have the meanings ascribed to them in the Agreement

IN WITNESS WHEREOF, the undersigned has executed this Deposit Request as of the day and date first above written.

City of Ankeny, Iowa:

Date: _____

By: _____

Name: _____

Approved this _____ day of _____, 20____.

DRA Properties LLC

By _____

Name: